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**TESTIMONY BEFORE THE JOINT SELECT COMMITTEE ON HOUSING  
NEITHER FOR NOR AGAINST LD 1257**

*An Act to Increase Housing Capacity and Protect the Municipal Tax Base and Working Lands*

**January 5, 2024**

Senator Pierce, Representative Gere, and members of the Joint Select Committee on Housing, my name is Judy East, and I am the Director of the Bureau of Resource Information and Land Use Planning (BRILUP) within the Department of Agriculture, Conservation and Forestry (DACF). I am speaking neither for nor against to LD 1257, *An Act to Increase Housing Capacity and Protect the Municipal Tax Base and Working Lands*.

This bill amends the State's subdivision law to remove from the definition of a subdivision the construction, placement, or division of an existing structure into 3 units on a single parcel, and into more than 3 but less than 18 units on a single lot in a designated growth area in a municipality that has municipal site plan review. It further defines an "administrative reviewing authority" to review these types of divisions and ensure they are not approved in a rural area as designated in the local Comprehensive Plan "unless the municipality has an adopted plan governing the approval of subdivisions."

The intent of the bill appears to a) simplify the development review process in designated growth areas and b) reduce development pressure on working forest and farmlands designated as rural by communities. The department supports this intent as it is proposed in Sections 1, 8, and 10 of the bill.

Section 1 defines a municipal reviewing authority, Section 8 allows for 3-18 dwelling units on a single lot in growth areas, and Section 10 provides for administrative review of such developments. The department believes this strategy provides an efficient way for municipalities to review and approve housing proposals in appropriate locations that can address the current housing crisis.

However, we have three significant concerns with how or whether the bill's intent is realized in the remaining sections of the proposed bill. First, the proposed definition of "Municipal Site Plan Review" in Section 3 contains mandatory and optional standards. The inclusion of regulatory standards is not appropriate in a statutory definition. Definitions describe what something is, not the criteria by which a thing is allowed. Optional standards in a statutory definition also create ambiguity in interpretation, and any that are excluded raise a potential violation of municipal ordinance power. The department notes that exceptions to the subdivision law can and should

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have associated standards for when they are allowed. Furthermore, the proposed standards already exist in statute (see 30-A MRSA §4402). We recommend that the definition proposed in Section 3 be eliminated.

Second, while the changes proposed in Sections 1, 8, and 10 may achieve the second intent of the bill, to reduce development pressure on working forests and farmlands designated as rural, the proposed changes in Section 4 (30-A MRSA §4401, sub-§4) are in direct conflict with this intent. Section 4 increases the construction or placement of a 4th new unit (from 3) on an existing tract to the list of actions that are excluded from the definition of a subdivision. With no staff or Planning Board review, the impacts on large rural lots from additional residential units could include loss of prime agricultural soils, infringement on and/or fragmentation of critical habitats, an additional curb cut on arterial roads, inadequate sight distance or improper drainage, and residential development away from services with resulting impacts on municipal budgets and an increase in carbon emissions from additional vehicle miles traveled.

Finally, Section 13 is problematic. Section 13 adds a 21<sup>st</sup> criterion to the list of the minimum mandatory review criteria when a municipality either adopts subdivision regulations or reviews a subdivision for approval. The state subdivision law is mandatory in all parts of all organized municipalities (see 30-A MRSA §4403-4404). Disallowing subdivisions in rural areas without a plan governing that review is not a review criterion for an ordinance or an individual subdivision. Indeed, eliminating the ability to subdivide in rural areas may be interpreted as a regulatory taking. The proposed criterion seeks to ensure that towns make conscious decisions about where and how to allow subdivisions in rural areas. There are various mechanisms to achieve this that local ordinances already use, such as cluster subdivisions, open space requirements that protect a specified percentage of agricultural soils, planned unit development, and requirements for future interconnection of road networks, among other strategies. We recommend that Section 13 be eliminated.

Thank you for your time. I would happily answer any questions now or at the work session.